

Zoning Text Amendment No: 05-23  
Concerning: TDR Easement-Nonresidential  
uses  
Draft No. & Date: 1 – 12/6/05  
Introduced: December 13, 2005  
Public Hearing: January 19, 2005; 7:00 pm  
Adopted:  
Effective:  
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: Councilmembers Subin, Floreen and Knapp

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance for the purpose of:

- requiring that a TDR easement limit future development of non-residential uses other than agriculture in the Rural Density Transfer (RDT) zone;
- clarifying that TDRs do not apply to property classified in the RDT zone developed with a non-residential use other than agriculture; and
- generally amending the TDR provisions.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-1	“RESIDENTIAL ZONES, ONE-FAMILY”
Section 59-C-1.39	“Special regulations for optional method development using transferable development rights”
DIVISION 59-C-9	“AGRICULTURAL ZONES”
Section 59-C-9.6	“Transfer of density-Option in Rural Density Transfer zone”

**EXPLANATION:** ***Boldface** indicates a heading or a defined term.*  
*Underlining indicates text that is added to existing laws by the original text amendment.*  
*[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. DIVISION 59-C-1 is amended as follows:**

**DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.**

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**59-C-1.39. Special regulations for optional method development using transferable development rights.**

**59-C-1.391. Applicability.** The following procedures and regulations apply to the transfer of development rights from land classified in the rural density transfer zone (RDT) to land classified in the transferable development rights (TDR) zones. The [planning board] Planning Board may approve subdivision of such land at densities not to exceed the maximum density permitted in the applicable TDR zone and conforming to the guidelines contained in the applicable master plan approved by the district council. Any increase in density above the density applicable to the standard method of development must be based on a ratio of one single-family dwelling unit for each transferable development right (TDR), and 2 multi-family dwelling units for each transferable development right (TDR).

**59-C-1.392. General Provisions.**

(a) A development right [shall] must be created, transferred and extinguished only by means of documents, including an easement and appropriate releases, in a recordable form approved by the [planning board] Planning Board. The easement [shall] must limit the future construction of one-family dwellings on a property in the RDT zone to the total number of development rights established by the zoning of the property minus all development rights previously transferred in accordance with this section, the number of development rights to be transferred by the instant transaction, and the number of existing one-family detached dwellings on the property. The easement must also prohibit the future development of any non-residential use, other than agriculture as defined in 59-A-2, on the affected property.

- (b) The transfer of development rights [shall] must be recorded among the land records of Montgomery County, Maryland.
- (c) The development density of a property under the TDR optional method [may] must not be increased above the maximum density permitted in the zone (section 59-C-1.332(c)) nor beyond the density or number of dwelling units recommended for [such] the property by the land use plan of the applicable master plan approved by the district council.
- (d) A property developed with the transfer of development rights [shall] must conform to the requirements of chapter 25A of the Montgomery County Code requiring MPDU[']s. The applicability of chapter 25A and the MPDU density increase provided by section 59-C-1.6 [shall] must be calculated after the base density of a property has been increased by a transfer or development rights. The density increase provided by section 59-C-1.6 may be made without [the acquisition of] acquiring additional development rights.

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**Sec. 2. DIVISION 59-C-9 is amended as follows:**

**DIVISION 59-C-9. AGRICULTURAL ZONES.**

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**59-C-9.6. Transfer of density—Option in Rural Density Transfer zone.**

In accordance with section 59-C-1.39 and in conformance with an approved and adopted general, master, sector, or functional plan, residential density may be transferred at the rate of one development right per 5 acres minus one development right for each existing dwelling unit, from the Rural Density Transfer zone to a duly designated receiving zone, pursuant to section 59-C-1.39. The density transfer provisions [are not applicable] do not apply to publicly owned rights-of-way for roads, streets, alleys, easements, or rapid transit routes classified in the Rural Density Transfer zone, or to property classified in the Rural Density Transfer zone that is developed with a non-residential use, other than agriculture

as defined in 59-A-2. The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

(a) A farm tenant dwelling, farm tenant mobile home, or guest house as defined in section 59-A-1.2, title “Definitions.”

(b) An accessory apartment or accessory dwelling regulated by the special exception provisions of divisions 59-G-1 and 59-G-2.

**Sec. 3. Effective date.** This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council